



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC MNR MNSD OPR FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the address noted on the Application, on December 12, 2008. A tracking number was provided. The Canada Post website shows the mail was returned to the sender on January 05, 2009. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act* (Act, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to compensation for loss of revenue for January; for compensation for late payment of rent; for compensation for

cheques that were returned due to insufficient funds; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Act*.

Background and Evidence

The Landlord submitted a tenancy agreement that shows the Tenant is required to pay monthly rent of \$985.00. The Building Manager stated that the Tenant paid a security deposit of \$492.50 on August 01, 2008.

The Building Manager stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of December 12, 2008, was posted on the front door of the rental unit on December 02, 2008. The Notice stated that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days.

The Building Manager stated that the Tenant still owes \$985.00 in rent from October of 2008, \$985.00 in rent from November of 2008, \$985.00 in rent from December of 2008, and \$985.00 in rent from January of 2009.

The Building Manager stated that the Tenant's rent cheque from September and the rent cheque from October were both returned due to insufficient funds. The Property Manager stated that item #10 of the tenancy agreement provides for a \$25.00 administration fee whenever a cheque is returned due to insufficient funds, although this portion of the tenancy agreement was not submitted in evidence.

The Landlord is seeking compensation, in the amount of \$25.00, due to a late payment of rent for October of 2008. The Landlord is seeking compensation, in the amount of

\$25.00, due to a late payment of rent for November of 2008. The Landlord is seeking compensation, in the amount of \$25.00, due to a late payment of rent for December of 2008. The Property Manager stated that item #10 of the tenancy agreement provides for a \$25.00 administration fee whenever rent is not paid on the date it is due, although this portion of the tenancy agreement was not submitted in evidence.

Analysis

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on December 05, 2008.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the Tenant receives the Notice. As the Tenant is deemed to have received this Notice on December 05, 2008, I find that the earliest effective date of the Notice is December 15, 2008.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was December 15, 2008.

In the absence of evidence to the contrary, I find that the Tenant was served with a Notice to End Tenancy that required the Tenant to vacate the rental unit on December 15, 2008, pursuant to section 46 of the *Act*.

Section 46 of the *Act* stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for

Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the Act, I find that the Tenant accepted that the tenancy has ended. On this basis I will grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant.

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$985.00 for October of 2008, and that the Landlord is entitled to compensation in that amount.

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In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$985.00 for January of 2009, and that the Landlord is entitled to compensation in that amount due to the fact that it is unlikely that new tenants will be located prior to the end of January.

In the absence of evidence to the contrary, I find that the tenancy agreement, which was signed by the Tenant, authorizes the Landlord to collect a \$25.00 administration fee for the late payment of rent. In the absence of evidence to the contrary, I find that the Tenant did not pay his rent on time in October, November or December of 2008, and that the Landlord is entitled to late fees in the amount of \$75.00. I decline to award the

Landlord compensation for late fees from January of 2009, as the Landlord did not apply for that amount in the Application for Dispute Resolution.

In the absence of evidence to the contrary, I find that the tenancy agreement, which was signed by the Tenant, authorizes the Landlord to collect a \$25.00 administration fee for cheques that are returned due to insufficient funds. In the absence of evidence to the contrary, I find that the Tenant tendered two funds that were returned due to insufficient funds, and that the Landlord is entitled to late fees in the amount of \$50.00.

I find that the Landlords application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$495.59, in partial satisfaction of the monetary claim.

Conclusion

The Landlord has been granted an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$4,115.00, which is comprised on \$2,955.00 in unpaid rent, \$985.00 in loss of revenue from January of 2009; \$75.00 in late fees, \$50.00 compensation for two cheques that were returned due to insufficient funds, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord will be retaining the Tenant's security deposit plus interest, in the amount of \$495.59, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$3,619.41. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated: January 12, 2009